

## FORM SUMMARY

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**Name of Form:** Execution Against Property

**Form Number:** GF-115

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**Statutory Reference:** Wis. Stats, §815.05

**Benchbook Reference:** Civil, Section

**Purpose of Form:** Court order directing the sheriff to seize property of a debtor in order to satisfy a judgment

**Who Completes It:** Clerk of court

**Distribution of Form:** Original to sheriff to be returned to court by sheriff indicating what the sheriff did or did not seize

**Accompanying Forms:** Generally none

**New Form/Modification:** Modification; last update 10/03.

**Modifications:** Added section at bottom to calculate amount to be collected by the sheriff. Modified comments section of form summary to clarify that there are two separate procedures for executing on a judgment.

**Comments:** There are three general types of orders to sheriffs directing the sheriff to take some action against a debtor's property: Attachment; Execution; and Replevin.

- Writ of attachment (§811.02): Order directing sheriff to seize and hold property pending execution because it is believed the debtor is concealing property or preparing to remove it from the jurisdiction with the intent to defraud the creditors. RMC has not created a writ of attachment form because such a writ is rarely used, requires significant due process protections for the debtor (because they are usually pre-judgment), and are usually quite unique to the particular situation.
- Execution against property (a/k/a Writ of Execution or Writ of Assistance) (§815.05, §815.11): The order to the sheriff directing the sheriff to seize property, sell it, and deliver the proceeds to the creditor. There is no requirement that the execution specify certain items of property, but sometimes creditors will identify specific items of property on which the sheriff should execute.
- Writ of Replevin: (§§810.03, 810.14): The order to the sheriff directing the sheriff to seize specific items of property and return

that property to the creditor, who then sells the property in a reasonably commercial manner to satisfy a judgment.

Section 815.05, Wisconsin Statutes provides that executions can only be issued out of the county where the:

- \* judgment was originally granted.
- \* a certified copy of the judgment has been filed; or,
- \* a transcript of the municipal judge's judgment has been filed.

RMC believes a "certified copy of the judgment" is NOT a "transcript of judgment." The clerk of court in the county where a "transcript of judgment" was filed does not have the jurisdiction to issue such an execution (See *Wilson v. Craite*, 60 Wis. 2d 350, 210 N.W.2d 700 (1973)).

If a judgment is granted in one county and a transcript of that judgment has been filed in a different county where a debtor's property is located, the creditor must obtain an execution for that property *from the county where the original judgment was filed*. When this occurs, the clerk of court may use this form but in the direction to the Sheriff, the name of the county to which the execution is issued should be entered. The CCAP version of this form will automatically insert the county name of the county where the judgment was originally granted. In such a case, the clerk should manually cross out the local county name and insert the name of the county to which the execution is issued. RMC debated removing the automatic insertion of the local county name, but doing so would have required the clerk in every single case to handprint the name of the county in the blank. RMC believed it was less burdensome to the clerks to have the local county name automatically be inserted and manually removed where executions are issued to a different county than to require the manual insertion in all cases. If this proves not to be the case, RMC should be notified.

As an alternative to the above procedure, Wis. Stats. §815.05, does permit executions to be issued in counties where a "certified copy of the judgment" is filed. If a creditor wishes to file a "certified copy of the judgment" in the new county, the creditor may do so. The clerk in the new county would be required to create a civil case file, charging the standard case filing fee, plus the docket fee. If the creditor goes through this process, the clerk of the new county can issue an execution.

**About this form:**

This form is the product of the Wisconsin Records Management Committee, a committee of the Director of State Court's Office and a mandate of the Wisconsin Judicial Conference.

**If you have additional information that does not change the meaning of the form, attach it on a separate page. The form itself shall not be altered.**